



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 7, 2005

Mr. Robert S. Johnson
Fort Worth Independent School District
100 North University Drive
Fort Worth, Texas 76107

OR2005-02989

Dear Mr. Johnson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 221606.

The Fort Worth Independent School District (the "district") received a request for the certified transcript of a specified closed session hearing. You claim that the requested information is confidential under section 551.104 of the Government Code. We have considered your arguments. We have also received and considered comments by the Texas Education Agency ("TEA"). See Gov't Code § 552.304 (allowing interested party to submit comments indicating why requested information should or should not be released).

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."¹ Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." *Id.* § 551.104(c). Thus, such information

¹ Unlike other exceptions to disclosure, this office will raise section 552.101 on behalf of a governmental body, because the Act prescribes criminal penalties for the release of confidential information. See Gov't Code §§ 552.007, .352; Open Records Decision No. 325 at 2 (1982).

cannot be released to a member of the public in response to an open records request.² *See* Open Records Decision No. 495 (1988). Section 551.146 of Government Code makes it a criminal offense to disclose a certified agenda or tape recording of a lawfully closed meeting to a member of the public. *See id.* § 551.146(a)-(b).

The district informs us that the requested information concerns a closed session hearing held in accordance with section 551.082 of the Government Code to deliberate an employee grievance. Based on your representations, we agree that section 552.104(c) applies to the requested information.

We note, however, that in their comments submitted to this office, TEA asserts that the requested information must be released under section 157.1073(e) of the Administrative Code. Section 157.1073(e) provides in relevant part:

(e) In all hearings filed against the school district, the school district must file the local record with its answer. The school district shall notify the petitioner in writing when the local record is prepared and make the record available to the petitioner for inspection.

19 Tex. Admin. Code § 157.1073(e). The definition of “local record” includes “a tape recording or transcript of the hearing at the local level.” *Id.* § 157.1073(d)(1). We note that, by its terms, section 157.1073 applies to hearings brought under section 7.057 of the Education Code. *See id.* § 157.1073(a). We further note that the instant request to the district was an open records request and not a request made pursuant to section 157.1073. Section 157.1073 does not apply to the availability of public information under the Act. Accordingly, we conclude that the district must withhold the requested information under section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

² As you acknowledge, the district is not required to submit the certified transcript of a closed meeting to this office for review. *See* Open Records Decision No. 495 at 4 (1988) (attorney general lacks authority to review certified agendas or tapes of executive sessions to determine whether a governmental body may withhold such information from disclosure under statutory predecessor to section 552.101 of the Government Code).

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Caroline E. Cho', written in a cursive style.

Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 221606

Enc. Submitted documents

c: Mr. Tom Corbin
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